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Current Topics.

The Civil Service.

ALL who have given intelligent attention to the growth and activity of the civil service during more than three years of war will applaud the deserved tribute which was paid by those who moved the resolution relating to that body in the Commons on 28th January. Sir J. WARDLAW MILNE moved that the House recommend the Report from the Select Committee on National Expenditure on Organisation and Control of the Civil Service to the consideration of His Majesty's Government. Mr. WOODBURN, who had acted as chairman of the sub-committee which took evidence, in seconding the motion, said that he thought that it was the first occasion on which the civil service had been the subject of a debate in the House since the war started. The civil service, not less than any other service, had rendered one of the great contributions to our war effort. It had grown from about 370,000 to about 670,000 by the addition of temporary civil servants. Recruitment at the beginning of the war was from all sections of the population, but in the higher appointment too much stress was laid on academic qualifications and not enough on practical experience. There were two kinds of control, departmental and Treasury, and it would be wrong to set up a new Ministry because the financial and co-ordinating machinery of the Treasury could not be abolished. The government machinery side of the Treasury control, as distinct from the financial side, should have an Under Minister to whom civil servants could look on as being independent of the money side of the Treasury. There should also be some co-ordinating of the investigation agencies of the Government. At present it was possible to have nine different investigations as to the income of a working-class home being conducted by local authorities and government departments. There was also a recommendation of some kind of staff college with a director of studies who could decide how people in the civil service could gain experience. Civil servants should circulate, as there was nothing that caused so much disinclination to change as the smooth running of a machine. Finally, it was proposed that the House of Commons should supervise the service through a Select Committee with an assessor. Sir KINGSLEY WOOD, in reply to the debate which followed, said that moves from one grade to another were not so infrequent as was sometimes thought. The suggestion that reorganisation and method had been neglected in the last twenty years before the war could not be accepted, and he directed attention to the Post Office, the Board of Inland Revenue, the Ministry of Labour and the Scottish Department as evidence to the contrary. The House should not undervalue the committee's main contention that more attention must be paid to organisation and the use, for instance, of outside experts. He did not think that there had been much support for the appointment of a new Parliamentary Secretary who would exclusively concern himself with civil service questions. Preparatory work in connection with an investigation into the question of training could begin at once. The Chancellor concluded by saying that the civil service had shouldered its great responsibility with credit and success and greater efficiency than any similar organisation in any quarter of the globe. The motion was agreed to.

More War Damage Amendment.

A FURTHER War Damage (Amendment) Bill was introduced in the House of Commons by the Chancellor of the Exchequer on 27th January. The most important amendment which it proposes is as to the basis of calculation of an estimate as to whether a property is or is not a total loss so as normally to qualify for a value payment of compensation under Pt. I of the War Damage Act, 1941. This question, as the law stands at present, has to be answered by reference to estimates of expenses which would be incurred in making good the war damage, what the property would be worth in the market if and when the war damage is made good, and the market value of the site for redevelopment. These matters are so conjectural that the War Damage Commission has been delayed in an important part of its work, and the new Bill proposes to substitute more certain bases of estimate for those now in existence. The test under the new Bill is to be prices and values prevailing at 31st March, 1939. It is thought that as a general rule a building which would have been worth restoring before the war will be worth restoring after the war. It is also considered that in addition to giving claimants more certainty as to their claims, the amendment will actually increase the proportion of cost of works payments which will be made. The general effect of this is bound to be beneficial. It may be recalled that s. 4 of the 1941 Act, which defines the cases in which payments of costs of works and value payments respectively are to be made, has already been amended by para. 4 of the First Schedule to the 1942 Act, which provided (*inter alia*) that the value which a hereditament would be likely to have should be taken to be the amount which the fee simple therein might be expected to realise on a sale thereof made in the open market, with vacant possession, subject to certain rights and restrictions set out in s. 3 (5), to which the hereditament was subject immediately after the damage, but free from other incumbrances. This amendment clearly did not go far enough, for, as the Practice Notes show, the Commission found itself obliged to make a classification of claims into Class A (safe total loss cases), Class B (safe partial loss cases), and Class C (undetermined). The effect of the amendment is to give statutory authority to what may be gathered from the Practice Notes to have been the practice of the Commission. The Bill also contains a number of minor amendments of the 1942 Act.

Town and Country Planning Bill.

THE new Town and Country Planning Bill was presented in the House of Commons on 20th January by Sir WILLIAM JOWITT. It has been announced that the Government intends that the Bill should be passed through all its stages in two consecutive days. The Bill provides for the appointment of a Minister of Town and Country Planning, whose function is to be "the duty of securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales." All the functions exercised by the Minister of Works and Planning under the Town and Country Planning Act, 1932, are to be transferred to the new Minister, and any other functions with regard to the use and development of land exercised by any other Ministers may also be transferred to the new Minister by Order in Council. The Bill also provides for the establishment of statutory commissions for the purpose of exercising, under the Minister, functions in relation to the use and development of land in England and Wales or in any area therein. The acquisition of development rights and the management of property are only two of the many functions which have already been suggested as suitable functions for such commissions. In the course of the debate on the second reading on 26th January, Mr. ARTHUR GREENWOOD expressed the view that comprehensive and orderly planning and development travelled far beyond the range of any single department and that this enormous task could not rest primarily with one Minister. Mr. WILFRED ROBERTS contended that more than general approval to the appointment of a Minister of Town and Country Planning could not be given when it was not known what powers he was to be given, and that there was real urgency for the Government to make up their minds on the recommendations of the Uthwatt and Scott Reports. Mr. WILLINK stressed the urgency of framing a national policy. Mr. RICHARDS said that before a system of planning could be applied to the whole country something quite definite would have to be decided about local Government. Sir GEOFFREY SHAKESPEARE criticised the Bill and expressed the hope that the great bulk of

building after the war would be done by private enterprise. Mr. SILKIN said that the Minister's task would not be easy, with 750 planning authorities in England and Wales, and 133 in the metropolitan area, and added that the powers proposed by the Uthwatt Committee to be conferred on local authorities did not go far enough. After further debate the Bill was committed to a Committee of the whole House for the next sitting day. On 27th January the Bill was considered in committee, read a third time and passed. On the same day it was read a first time in the House of Lords.

The Courts and Military Exemptions.

THE Defence (General) Regulations, 1939, reg. 72 (1B) empowers the Secretary of State to direct the removal of any disqualification from holding or obtaining a licence to drive a motor vehicle under Pt. I of the Road Traffic Act, 1930. On 28th January, Mr. AMMON asked the Home Secretary in the House of Commons whether his attention had been called to comments by Mr. Justice CHARLES and Mr. Justice HUMPHRIES concerning interference by the military authorities in setting aside judgments given by the civil courts, and in how many instances, reg. 72 (1B) had been invoked for the purpose. Mr. MORRISON replied that the grave cases coming before the assizes were of a different character from those in which use had been made of the special powers conferred on him by Defence Regulation 72 (1B). In the two years ended December, 1942, there had been forty-two cases in which use had been made of these powers on the application of military authorities. In none of these cases was the disqualification imposed by an assize court. In one case it was imposed by a court of quarter sessions, and in the remaining forty-one cases by a court of summary jurisdiction. In the great majority of the cases, said Mr. MORRISON, the disqualification had been imposed for driving without a third party insurance, in accordance with the requirement of the Road Traffic Act, 1930, that on a conviction for this offence disqualification shall be automatic unless the court finds special reasons to the contrary. In all those cases careful inquiry as to the circumstances was made, and a decision to remove the disqualification in advance of the date specified in a court's directions was only given if it was clear that there were good grounds for doing so in the interests of the war effort. The statement should allay public anxiety on the matter, but one may be permitted to question the utility of a regulation which has been invoked in so few cases, and which gives the military authorities power, however wisely used in fact, to ask the Minister to enable disqualified drivers to return to the road.

War Damage Repairs.

THE War Damage Commission issued in the *London Gazette* on 22nd January a notice which affected the following area: "BOROUGH OF BRIDLINGTON: An area comprising the following ward and parts of wards: Quay South Ward: Quay North Ward—that part to the east of the London North Eastern Railway (Hull and Scarborough line) and to the south-west of the centre line of Limekiln Lane; Hilderthorpe North Ward—that part to the east of the centre line of St. John's Avenue." The notice is issued under s. 7 (2) of the War Damage Act, 1941, whereby provision is made for securing that the making of payments by the Commission in respect of war damage shall have regard to the public interest. The effect of the notice is that any person proposing to execute works for the repair of war damage, other than temporary works, in the area specified where the total ultimate cost will be more than £100 on any one hereditament, must first inform the Commission. The condition laid down regarding notification will be strictly enforced, and the incurring of a larger expenditure without prior notification to the Commission will render the person doing such works liable to forfeit the right to repayment by the Commission. Power is given to the Commission in such cases to impose requirements as to the nature of works, the materials to be used, and the time for their execution, and it may change a cost of works payment into a value (or total loss) payment in those cases where restoration of a building would be contrary to the public interest. In the case of buildings which have been totally destroyed the Commission is already empowered by the Act, without the previous publication of notices in the *Gazette*, to attach conditions to the payments made, in order that the public interest may be observed.

Compensation for Requisitioning: Forced Sales Losses.

WE are indebted to the *Estates Gazette* of 23rd January for an interesting report of the hearing of a claim under the Compensation (Defence) Act, 1939, by the General Claims Tribunal on 8th December, 1942. The claim was in respect of a requisitioned garage. Compensation was claimed under s. 2 (1) (*a*) of the Act at the rate of £775 per annum, and an additional amount of £425 14s. 2d. was claimed in respect of expenses incurred in complying with directions, plus legal costs and surveyor's fees. The latter amount was an aggregate sum composed of fourteen items, many of them being charges for labour for removal from the requisitioned premises to alternative accommodation, others being for alleged losses on forced sales, and one item for damage in the course of removal of motor vehicles, some in the course of overhaul, to unenclosed land. Some of the removal expenses were admitted. It was contended that the claimants were entitled to be compensated for the expense consequent upon complying with the direction they received to remove the whole of their material at short notice. With regard to the forced sales it was argued for the authority that at first sight one failed to see why the claimants could not have obtained a proper price when they had to sell their goods. But even assuming that they got a lower price than they would have done in the ordinary course of events, could a loss on a forced sale be an expense "reasonably incurred . . . for the purpose of compliance with directions" within the meaning of s. 2 (1) (*d*)? Those directions were referred to in reg. 51, which empowered an authority to give directions in connection with the taking possession of land. The only direction given in the present case was, impliedly, that the claimants must vacate their premises and take everything with them. If a loss on a forced sale was an "expense incurred" was it incurred for the purpose of compliance and not as a result of compliance? An "expense incurred" normally meant an expenditure of money, which a loss on a forced sale was not. The same point arose in connection with that part of the claim which related to the damage to vehicles through leaving them in the open. The tribunal awarded compensation under s. 2 (1) (*a*) at the rate of £500 per annum, and under s. 2 (1) (*d*) the sum of £99 11s. 1d. Nothing was allowed for the loss on forced sales and loss for damage to motor vehicles through their removal.

Recent Decisions.

In *In re Rothermere; Mellors, Basden & Co.* v. *Coutts & Co. and Another*, on 22nd January (*The Times*, 23rd January), UTHWATT, J., held that where a deed provided that the covenantor should pay M £12,000 without interest on or before 1st May, 1950, but that if the covenantor died on or before that date without having made the payment, the £12,000 should immediately become due and should constitute a first charge on the covenantor's estate, it was ridiculous to assume that the covenantor wished to create a charge which would affect every asset which he possessed, real or personal. The court held that there was another and more reasonable construction available, namely, that the sum should be paid in priority to any other debts affecting his estate, and that that construction should be adopted.

In *Perrin and Others* v. *Morgan*, on 25th January (*The Times*, 26th January), the House of Lords (THE LORD CHANCELLOR, LORD ATKIN, LORD THANKERTON, LORD RUSSELL OF KILLOWEN and LORD ROMER) held that where a testator in a home-made will directed that "all moneys which I die possessed of shall be shared by my nephews and nieces now living" the words "all moneys" were to be construed in a wider sense than any strict legal meaning of the word "money," and included investments and household effects, and all the net personalty of the estate. The Lord Chancellor protested against the idea that in construing a will there must be some fixed or legal sense of the word "money," and said that the proper meaning was the correct meaning in the case of the particular will, and there was no necessary opposition between that meaning and the popular meaning. (This case is reported at p. 47 of this issue).

In *Performing Right Society, Ltd.* v. *Gillette Industries, Ltd.*, on 26th January (*The Times*, 27th January), BENNETT, J., held that performances of pieces of music broadcast on a wireless set in a factory to about 600 employees were performances in public within s. 1 (2) of the Copyright Act, 1911, and therefore infringed copyright in those pieces of music within s. 2 of the Act.

In *British Fermentation Products, Ltd.* v. *Teal*, on 28th January (*The Times*, 29th January), a Divisional Court (VISCOUNT CALDECOTE, L.C.J., and TUCKER, J.) held that where in proceedings under the Food and Drugs Act, 1938, a sample has been procured under such circumstances that the Act requires its division into parts, s. 80 (4) of the Act requires that the part of the sample retained by the person who procured it must be produced at the hearing, and not a mere portion of the part retained. As the statute was a penal one and must be strictly construed the court quashed a conviction where s. 80 (4) had not been strictly complied with.

In *Bryant* v. *The Operative Property Corporation, Ltd.*, on 29th January, UTHWATT, J., refused to grant an injunction to a tenant of a flat to restrain his landlords from cutting off, otherwise than between the hours of 9.30 p.m. and 6 a.m., and except to the extent required by any statutory order, the supply of hot water to his flat, as the court had no jurisdiction to grant any mandatory injunction which would require continuous supervision and inquiry to see whether it was being carried out.

In a case heard on 29th January, the Court of Appeal (SCOTT, MACKINNON and GODDARD, L.JJ.) held that a workman who could not voluntarily leave or be discharged from his employment, owing to the Essential Works Order, was entitled to be paid the normal wages for the work he had been doing, as the order preserved the contractual rights of the parties, and he was entitled to refuse work with the same employers at lower wages.

Compensation for Industrial Diseases: Jurisdiction.

It is enacted by s. 43 of the Workmen's Compensation Act, 1925, that compensation shall be recoverable from the employer who last employed the workman during the twelve months in the employment to the nature of which the (industrial) disease was due. But if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved, that other employer shall be the employer from whom the compensation is to be recoverable.

In connection with these provisions, the important and practical question of jurisdiction has lately been raised in the Sheriff (County) Court case of *Scobbie* v. *Fife Coal Co. and Hepscott Coal Co., Ltd.* That was an application for recovery of compensation against a Scottish company. The claimant averred that he was incapacitated by an industrial disease contracted whilst in their employment. The Scottish company averred that, if the claimant did suffer from the said disease, he had contracted it whilst in the employment of a previous employer, a company whose registered office and whole business were in England, and they joined the English company as parties to the arbitration.

The Hepscott Coal Co., the added respondents, pleaded that not having a registered office or a place of business in Scotland, and not being subject to the jurisdiction of the courts of Scotland, the application should so far as they were concerned be dismissed. This plea was repelled. We shall indicate the broad grounds of the decision.

Clearly, had this been an ordinary litigation plea of no jurisdiction, it must have been sustained, but "procedure under the Workmen's Compensation Acts is not ordinary litigation, or indeed litigation at all. The right given to the workmen is a new and statutory right to be expiscated by arbitration, and not by an action at law; and we must consider what the statute says with reference to the way in which it may be determined or modified" (*per* Lord Kinnear, in *Pumpherston Oil Co., Ltd.* v. *Caveney*, 5 F. 963, quoted by Lord Sumner in *Wishart* v. *George Gibson & Co.* [1914] S.C. (H.L.) 53, who in turn is quoted by Pollock, M.R., in *Hunter* v. *Stadische & Co.* [1925] 2 K.B. 493). What then does the statute say?

Without going any further, the Act itself, by proviso (ii) to s. 43 (1) (*c*), can be considered to give jurisdiction over the Hepscott Company. It directs that they should be joined as parties to the arbitration, and that can surely mean only that they, whoever or wherever they might be, should be joined in the arbitration already initiated. It must be assumed that Parliament was fully alive to the fact that the courts of Scotland have ordinarily no jurisdiction over Englishmen, and the courts of England no jurisdiction over Scotsmen and that, in setting up the new statutory tribunal of arbitration to expiscate a new and statutory right, the Legislature deliberately ignored the border between the two nations, and has given to an arbitrator a jurisdiction not known to our courts of law, that is, jurisdiction over every employer in Great Britain, whether he be Scotsman or Englishman.

Moreover, the statute has given to every workman in Great Britain a right to the statutory compensation, and as it has laid on every employer in Great Britain the statutory liability to pay compensation, so it has given to each statutory tribunal of arbitration a special jurisdiction over such a second respondent in whatever part of Great Britain he may reside. By this extraordinary jurisdiction the statutory rights can the more conveniently be worked out.

There does not appear to be any case in the reports which deals with this question of jurisdiction under s. 43. But two decisions of the Court of Appeal deal with a similar point. In *R.* v. *Owen* [1902] 2 K.B. 336 an Englishman was injured by accident (not an industrial disease) in England. His employer was a Scotsman, domiciled and living in Scotland. The Compensation Act of 1897, Sched. II, cl. 9, provided that where the parties resided in different districts, the arbitration proceedings should take place in the court of the district in which the accident happened. The claimant accordingly applied to the county court of the district in which the accident happened, but the county court judge held he had no jurisdiction. The Court of Appeal reversed, and held there was jurisdiction. In *Hunter's* case, *supra*, again reversing the county court judge, the rule of *R.* v. *Owen* was extended to cover a German firm employing an Englishman in England. There Pollock, M.R., expressly bases his opinion on the speech of Lord Sumner in the *Wishart* case, *supra*, and on the wider (but in the legal sense, as determining jurisdiction, irrelevant) principle that the rights and obligations given or imposed by the Workmen's Compensation Act are by the statute made part of every contract of employment in Great Britain. On the same principles are based the opinions of Warrington and Atkin, L.JJ.

Mr. Kenneth Swan, K.C., Mr. Tristram Beresford, K.C., and Mr. Cyril King, K.C., have been elected Masters of the Bench of the Middle Temple.

A Conveyancer's Diary.

Finance Act, 1941, s. 25.

It may be remembered that in the third part of my review of the Chancery Reports I gave some brief attention to *Re Waring* [1942] Ch. 309, 426; 86 Sol. J. 139, 310, and to s. 25 of the Finance Act, 1941, with which it dealt. There have been several other cases on this rather important matter, and, although they have not, at the time of writing, appeared in the law reports, some notice of them seems desirable.

It will first be advisable to set out the material enactment:—

"(1) Subject to the provisions of this section, any provision, however worded, for the payment, whether periodically or otherwise, of a stated amount free of income tax, or free of income tax other than sur-tax, being a provision which—

(*a*) is contained in any deed or other instrument, in any will or codicil, in any order of any court, in any local or personal Act, or in any contract, whether oral or in writing; and

(*b*) was made before the third day of September, 1939; and

(*c*) has not been varied on or after that date;

shall, as respects payments falling to be made during any year of assessment, the standard rate of income tax for which is ten shillings in the pound, have effect as if for the stated amount there were substituted an amount equal to twenty twenty-ninths thereof."

Subsections (2) and (3) deal with sur-tax and are not material to this article; subs. (4) relates to the effects of the section on reliefs. Subsection (5) is as follows:—

"This section shall not—

(*a*) affect any provision falling within Rule 23 of the General Rules (which renders invalid agreements not to deduct tax);

(*b*) affect any provision if, by virtue of any provision in the same or any other deed, instrument, will, codicil, order, local or personal Act or contract, which contemplates rises in the rates of income tax, the payments thereunder have ceased, or in the event of further rises in the rates of income tax may cease, to be wholly free of income tax, or, as the case may be, wholly free of income tax other than sur-tax;

(*c*) apply to any emoluments of any office, employment, pension or stipend taxed under Schedule E; or

(*d*) apply to any dividend or share of profits."

It may perhaps be as well to clear subs. (5) out of the way before considering subs. (1). Paragraphs (*c*) and (*d*) speak for themselves: the short effect of para. (*a*) is to exclude from s. 25 any provision *in an agreement* which under the ordinary rules would be one which would not effectively free the payment from tax. Of course, most draftsmen of agreements now know well enough how to get round r. 23; para. (*a*) simply leaves matters where they were in cases when the payment would anyhow be subject to tax. Paragraph (*b*) is evidently designed to prevent the section from applying in cases where the parties have themselves contemplated and provided for effects like those of the section.

Subsection (1) begins by setting out the categories of payments with which the section is concerned. The payments have to be "of a stated amount free of income tax." These words have recently been construed by Farwell, J., in *Re Hawkins*, 87 Sol. J. 21. In that case a testator, who died in 1930, left a certain house to his trustees on trust to permit his wife to reside there rent free during her life, the trustees paying out of his other estate the expenses of rates, taxes, repairs, insurance and other outgoings. The first question was whether these payments by the trustees fell within s. 25. Farwell, J., held that they could not: for the total of them was not a "stated amount" (though it was ascertainable *ex post facto* in any year) since the amount must vary with the quantity of repairs which were done in any year "and other matters in connection therewith." If one may respectfully say so, this decision is clearly right, as the section deals with payments of given sums of money, which must mean such as are, or can be, ascertained by mere calculation without depending on any extraneous factor. It is not so obvious that the section ought to have been so drafted as to have this effect *qua* the part of the provision which contemplated making the right of residence free of Sched. A income tax, since it is not evident why freedom from Sched. A tax should be on a different basis from freedom from Sched. D tax.

The second part of the case dealt with a gift to the testator's wife, so long as she should keep any of his dogs or horses, of 3s. a week for each dog and 15s. a week for each horse, free of income tax in both cases. These payments were held to be of "stated amounts" and so to be within the section, since ascertainment was a mere matter of seeing how many dogs and horses there were and doing a multiplication sum.

Re Hawkins thus focusses attention on the words "a stated amount": it is clear not only that the amount must be one precisely ascertainable, not merely *ex post facto*, but also that there must be an actual *amount*. The section does not include other rights, however capable of valuation in terms of periodical sums. It is thus submitted that it does not affect life interests

free of tax in shares of residue; such an interest is, of course, worth an amount in each year, but that amount is not the predominant consideration, nor is it "stated."

The next point dealt with in the cases is that the provision in question must be one contained in an instrument which has been "made" before 3rd September, 1939. So far no difficulty has been reported as having arisen on the "making" of any class of instrument other than testamentary ones. As we saw on a previous occasion, the Court of Appeal decided in *Re Waring* that the material date in regard to a testamentary instrument is not the date of the testator's death and the coming of the instrument into force, but of its execution, and also that where the provision was contained in a pre-war will it fell within the section notwithstanding that the testator had made a codicil after the outbreak of war, which did not contain any express confirmation of the will. The court left open for future consideration the question what would have happened if the codicil *had* expressly confirmed the will. This last point has now been considered by Simonds, J., in *Re Tredgold*, 87 SOL. J. 30. The learned judge held that in that event the section had no application, because the codicil in that form was the final expression of the whole of the testator's will. He referred to *Anderson* v. *Anderson*, L.R. 13 Eq. 381, where the wife of an attesting witness of a will was held entitled to a legacy given to her by the will because the will had been expressly confirmed by a codicil witnessed by quite other persons. He also mentioned *Re Blackburn*, 43 Ch. D. 75, where a testamentary power of appointment was held validly exercised notwithstanding that the power had not arisen at the date of the will which sought to exercise it, because the will was confirmed by codicil after the power had arisen. There seems no doubt on the authorities but that *Re Tredgold* was rightly decided, and the decision also appears to give a satisfactory meaning to s. 25, in that a testator who makes a codicil including a confirmatory clause must obviously be taken to have reconsidered his will before confirming it. What does seem, if I may say so, rather less satisfactory is the effect of *Re Waring*, because the absence of a confirmatory clause may well be due to pure inadvertence; but I do not think that any amendment of the section on this point would be possible without doing violence to the cardinal principles that testamentary dispositions have to be in writing, and that one cannot look behind the writing.

The other two available decisions on s. 25 were both concerned with subs. (1) (*c*), viz., "has not been varied on or after" 3rd September, 1939. These words are, of course, grammatically governed by the words "any provision" in the opening part of the subsection, and not by the list of classes of instrument contained in subs. (1) (*a*). It is the provision which must not have been varied, not the instrument creating the provision. In *Re Cobbold*, 86 SOL. J. 295, there had been a separation deed in 1921, under which the husband covenanted to pay certain periodical sums free of tax to trustees for his wife should she survive him. The husband died in 1929 leaving his residue to his son. By a deed of 30th November, 1939, made between the wife, the son and the husband's will trustees (the trustees of the separation deed not being parties), the wife agreed to accept a smaller annuity for the duration of the war. This transaction was held by Farwell, J., not to be a variation of the provision in the separation deed because it was merely a temporary arrangement and at the end of the war the provision would stand unaltered. I do not see how any other decision could have been arrived at in the absence from the deed of 1939 of the persons who were covenantees under the earlier deed; the effect of their absence must presumably have been that the covenantees could still during the war have enforced the original covenant if they had chosen to do so. I do not think that it necessarily follows that the learned judge would have reached the same conclusion if the trustees of the separation deed had been parties to the new arrangement. In *Re Westrik* [1942] W.N. 200; 86 SOL. J. 340, Farwell, J., dealt with a case where four small annuities, free of tax, had been given by a will made in 1930, the estate being given, subject to the annuities, to charities. The estate was much larger than was necessary to keep down the annuities, and an arrangement was made for the appropriation of an adequate fund to keep them down and for the distribution of residue. The arrangement was put into effect under an order of the court dated 29th July, 1940. The charities later set up that s. 25 applied to the annuities. This contention was accepted by Farwell, J., who said that all that had happened in July, 1940, was the "provision of machinery to enable the residuary legatees to get immediate payment." The provision of annuities made by the will was not altered in any way.

Some of these decisions might perhaps be thought at first sight surprising as the reasoning is close and technical; but that is inevitable in the construction of any statutory provision dealing generally with rights of property. It is always difficult to draw the line between cases falling within and without a provision of this kind, and in trying to draw it the court has to be guided primarily by the precise language used in the enactment, and secondarily by such previously existing rules of law and of construction as may be available. The effect must be to produce some cases where the decision seems perhaps based on grounds a little difficult to connect with the supposed policy of the section; but it must be remembered that it is mainly the difficult marginal cases which get to the court and are reported, and in any event there is no other proper method of approaching the problem if the law is to be kept consistent and logical.

Landlord and Tenant Notebook.

A Small Tenements Recovery Act Case.

THE Small Tenements Recovery Act, 1838, is a statute which has a way of reminding us of its existence somewhat unexpectedly. The scope of the enactment is narrow. It deals only with a remedy and, except where its procedure has been applied by certain other statutes—e.g., the Small Holdings and Allotments Act, 1926 (recovery of holding by county council), and the Housing Act, 1936 (recovery of subject-matter of demolition or clearance order)—does not apply when the rental exceeds £20 a year or the term seven years. But it will apply to a tenancy created by mortgagor attorning to mortgagee at a nominal rent, as was held in *Dudley and District Benefit Building Society* v. *Gordon* [1929] 2 K.B. 105.

The most recent occasion, I believe, on which the statute figured in the reports was that of *Siryer* v. *Amies* (1940), 56 T.L.R. 876, when it was held that a tenant was not compelled by anything in the Act to submit to the jurisdiction it provided, and consequently the plaintiff in that action was held entitled, on receiving notice of his landlord's application, to sue for a declaration in the High Court.

The procedure and machinery of the Act are as follows: The landlord serves the tenant (or other occupier) with notice of his intention to apply to the justices to recover possession. The notice must be in the form prescribed in the schedule: it informs the recipient that unless peaceable possession of the premises which were held under such and such a tenancy which has been determined by notice to quit or has expired (as the case may be) be given on or before the expiration of seven clear days, the landlord will apply, on a date and at a time mentioned, to the justices of the peace acting for the district (to be named) to issue their warrant directing the constables of the said district to enter and take possession, etc. (s. 1).

I shall refer to the mode of serving this application presently. To complete the summary of the procedure: the justices, unless the tenant or occupier appears and shows reasonable cause why possession should not be given, take the landlord's evidence of holding and determination and issue a warrant to the constables and peace officers.

A later provision (s. 3) seems to contemplate the possibility of error. It enacts that if the person obtaining the warrant had no right to it, his obtaining it is trespass, although no entry has been made. The tenant or occupier may then enter into a bond with the landlord or agent, with two sureties approved by the justices, to bring an action, and "execution of the warrant shall be delayed until judgment shall have been given in such action of trespass." The bond itself must, by s. 4, be approved and signed by the justices.

To revert now to the mode of serving the application by which the landlord starts the ball rolling. This is provided for by s. 2: "Such notice of application intended to be made . . . may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the persons so holding over . . . and the person serving the same shall *read over* the same to the person served or with whom the person the same shall be left as aforesaid, *and explain the purport and intent thereof*: provided that if the person so holding over cannot be found, and the place of abode of such person shall either not be known or admission thereto cannot be obtained for serving such summons, the posting up of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person."

Now in *R.* v. *Justices of Droxford, ex parte Knight*, reported in *The Times* of 21st January, application was made for a *mandamus* against justices who had refused to consider the approval of sureties under s. 3, *supra*. It appeared that the applicant (for a *mandamus*) had been, and claimed to be, tenant (or perhaps statutory tenant) of a cottage.

When the application for a warrant came before the justices it was stated that the purport and meaning of the application had not been explained to the wife of the tenant as provided for by s. 2, *supra*, and submitted that there was consequently no jurisdiction to issue a warrant. The objection was overruled: it does not appear that the allegation was either contested or admitted, but the bench apparently thought that in any event strict compliance with provisions designed to meet the case of illiterate tenants was no longer necessary.

And when the tenant, having instituted county court proceedings for trespass, attended with sureties for the purposes of entering into a bond as provided by s. 3, *supra*, the justices said they had already decided the matter and rejected the application.

The Divisional Court held that they had no right to reject it: s. 3 gave the dissatisfied tenant the right to sue for trespass, and

to have the justices' warrant stayed by entering into bond with sureties. The *mandamus* was granted accordingly.

It will be observed that, strictly speaking, the narrative in so far as it sets out the facts about the service is unnecessary. Indeed, in his judgment, the Lord Chief Justice was at pains to point out that he expressed no opinion whether the county court action was likely to succeed. It is not, indeed, clear whether the sole ground of that action is the alleged irregularity in service, or whether the tenant claims the protection of the Rent Acts, or what. There is a special provision in the Act to the effect that "irregularity or informality in the mode of proceeding for obtaining possession" is not to count as trespass, but an action on the case can be brought instead.

There is a recorded county court decision, *Cable* v. *Myers* (1903), 115 L.T.N. 445, in which the court concerned decided that an irregularity in service constituted trespass. In that case it was found that the notice had not been properly served; the claim, we are told, spoke of "insufficiency" of service; but the report does not give the nature of the defect.

The justices in the recent case appear to have applied the maxim *cessante ratione cessat lex*, which has never found much favour in English law. A statute may, of course, expressly contemplate and provide for such a change, as does, for instance, s. 33 (1) of the Marine Insurance Act, 1906, excusing performance of an assured's warranty when "by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract": this, it is suggested, would absolve an owner under a warranty to sail with convoy if peace were declared. But there is nothing like this in the Small Tenements Recovery Act, 1838, and the mere fact that it is a piece of very Early Victorian legislation does not mean that s. 2 is impliedly repealed by Education Acts of a much later date. This though it may well be that the explanation of the notice might in some cases prove to be an instance of *obscurum per obscurius*.

Correspondence.

British Empire Cancer Campaign.

Sir,—Let me express to members of the legal profession the gratitude of our Grand Council for the response to the appeal for legacies made by myself as its Chairman (and on earlier occasions by my predecessors) on behalf of the British Empire Cancer Campaign. A steady current of bequests, both large and small, springing from a public that has become conscious of our work and its value to humanity, has been, I may say, one of the main factors that enables us to maintain an effective assault upon the problem of cancer. I need scarcely tell you that medical research of this nature must be carried out unremittingly; and it is a matter for deep satisfaction that, throughout the whole period of war, the income accruing to us from legacies has assured the continuance of our activities.

In his recent address to our annual general meeting the President of the Royal College of Surgeons measured the progress of our campaign towards its final goal. As one who was profoundly impressed by what he said, I have no hesitation in appealing once again to my profession; will you, I beg, make use of your opportunities to indicate the invaluable aid that may be given to our work, through the sums bequeathed to us by a public that has come to recognise victory over cancer as one of the major tasks of our time and generations?

HAILSHAM,
Chairman, Grand Council.

London, S.W.1.
30th January, 1943.

Review.

Second Supplement (1942) to Miller's Excess Profits Tax. By WILLIAM MILLER, M.A., LL.B., F.I.P.A. 1943. Demy 8vo. pp. x, and (with Index) 52. London: Eyre and Spottiswoode (Publishers), Ltd. 3s. 6d. net.

This supplement comprises the complete text of the Finance Act, 1942, Pt. IV, and Ninth Schedule, fully annotated. Few changes in the law have been made by this statute, and many anomalies and inequalities still remain. The many problems arising are dealt with as efficiently in this supplement as in the original work, in which the author (an ex-senior inspector of taxes) set himself a high standard.

Mr. Barnett Hollander, of the New York (U.S.A.) Bar, has returned from America and announces the dissolution of his firm of Messrs. Hollander and Bernheimer, as from 31st December, 1942. Mr. Richard J. Cronan, of the same Bar, who practised for many years in Paris, until his return to New York City upon the fall of France, and Mr. Hollander have formed the firm of Messrs. Hollander & Cronan, as from 1st January, 1943, with offices in London and New York City. Their address in London is 3 Paper Buildings, Temple, E.C.4; telephone, Central 9948 (additional temporary office at 12A Abbey Court, Abbey Road, London, N.W.8; telephone, Maida Vale 3556) and in America at 30, Broad Street, New York City Mr. Hollander will continue to make his office in London and Mr. Cronan in New York City.

To-day and Yesterday.

LEGAL CALENDAR.

February 1.—Lord Wittenham of Wallingford was a member of Lincoln's Inn who attained distinction outside the law. Called to the Bar in 1879, he actually practised for a while, but in 1887, before he had time to make any particular mark as an advocate, he was appointed Registrar of the Privy Council. After discharging the duties of that office for nine years he went into Parliament and finally was raised to the peerage in 1918. Beyond the realm of law and politics, he enthusiastically furthered the development of opera in England. He died on the 1st February, 1931.

February 2.—Lord Esher had a markedly individual turn of expression, and the report of a judgment of his delivered on the 2nd February, 1885, in a case arising out of the will of a Cardiff hotel keeper (*In re Cousins*, 30 Ch. D. 203) can almost rank as a curiosity. He said: "Cardiff is a wonderful place, as everybody who has been there knows; and Cardiff, for some reason or other, either by reason of the extension of the docks and other works, or by the careful superintendence and personal interest of its great proprietor, Lord Bute, has jumped up into a town double or treble the size that it was; not according to its natural growth, but according to a sudden artificial increase; and therefore this hotel, which probably was worth £10,000, has jumped up to a largely increased value, and immediately there is a law suit and, with the admirable ingenuity of lawyers of every description, they try to make out of a man's will what he did not say, and what he never thought of."

February 3.—On the 3rd February, 1763, "Christopher Tancred, of Whixley in Yorkshire, Esq., lately deceased, having bequeathed £50 annually apiece to four young students of Lincoln's Inn . . . till they should be called to the Bar, and for three years after they became barristers; Edward Reeve, Esq., student of that Inn, made an elegant Latin speech in Lincoln's Inn Hall, before that Honourable Society, in commemoration of so deserving a benefactor."

February 4.—On Sunday, the 4th February, 1733, the report spread in the Temple that there was murder in Tanfield Court. An old lady of eighty, Mrs. Lydia Duncomb, who lived in a set of chambers there, had been found strangled, together with Elizabeth Harrison, her companion. The seventeen year old maid was likewise dead with her throat cut. Sarah Malcolm, a young laundress, was arrested the same evening at the Temple Gate, on the information of a gentleman who had chambers on the same staircase and had found some bloody linen under his bed. About £50 was found hidden in her hair. She was convicted at the Old Bailey and hanged in Fleet Street opposite Mitre Court.

February 5.—There is a warm glow about the mediæval records of the Inns of Court which marks institutions run by human beings for human beings (and not by officials for economists). Thus, on the 5th February, 1516, one Whytyng was admitted to the Middle Temple, being pardoned all offices and vacations and allowed to be in or out of commons at his pleasure on condition of giving to the Society either a picture well painted to hang in the Hall or a hoggeshead of good wine.

February 6.—The birth of Sir Thomas More was recorded by his father, John More, in a Latin memorandum to the following effect: "Memorandum, that on the Friday next after the Feast of the Purification of the Blessed Virgin Mary, between two and three in the morning, was born Thomas More, son of John More, gentleman, in the seventeenth year of King Edward the Fourth, after the Conquest of England." That would make the date the 6th February, 1478, but unfortunately the writer chose to confuse posterity by adding at some subsequent period the interlineation: "to wit, the seventh day of February." Now the Friday next after the Purification in the seventeenth year of Edward IV was the sixth and not the seventh, and much controversy has resulted, but Professor Chambers, in his great life of More, stated that, having examined the original manuscript in the library of Trinity College, he came to the conclusion that the main entry was accurate and the addition the slip of an inaccurate recollection.

February 7.—Mrs. Emily Birch, the elderly widow of a coach-maker, kept a lodging-house in Bedford Place, her sister-in-law, Miss Augusta Birch, acting as housekeeper. Mr. William King, a needy attorney, was a friend of Mrs. Birch, and conceived a brilliant scheme for their mutual enrichment. She ordered some £3,600 worth of plate, jewellery, upholstery, wine and the like, and after it was delivered, but before it was paid for, he put in an execution for over £2,000. They also carried off twelve large boxes of valuables and went to live at Reading. Before leaving London they had spent two or three days destroying papers, but they were careless and left some torn scraps which disclosed the conspiracy. The whole story is like something out of Dickens. On the 7th February, 1844, all three were tried in the Queen's Bench. Miss Birch was acquitted; King was sentenced to eighteen months' imprisonment, and Mrs. Birch to nine.

Our County Court Letter.

Construction of Will.

In a case at Wolverhampton County Court (*In re Wedge, deceased; Orange* v. *Wolverhampton and District Permanent Building Society*) the executor of Lizzie Wedge, deceased, applied for directions as to the application of assets in his hands. The building society counter-claimed for a declaration that a mortgage and further charges were subsisting charges upon certain property of the testatrix. The evidence was that, by his will of the 7th March, 1912, George Wedge had given and bequeathed to his wife, Lizzie Wedge "all my property and personal effects, and at her decease any remaining part of the same to revert to my niece, Harriet Ann Wedge, of Sheehan House, Springfield Road, Wolverhampton." On the 9th August, 1913, George Wedge had executed a mortgage of Sheehan House, and probate of his will was granted to Lizzie Wedge on the 15th June, 1916. On the 9th September, 1919, Lizzie Wedge and Harriet Ann Wedge were parties to a transfer of the mortgage to the Building Society. On the 23rd December, 1925, Lizzie Wedge and Harriet Ann Wedge created a further charge on Sheehan House in favour of the society. On the 3rd February, 1926, Harriet Ann Wedge died. Thereafter Lizzie Wedge purported to create four further charges in favour of the society, although no vesting deed had been executed in her favour. Lizzie Wedge died on the 14th October, 1941, having by her will of the 10th September, 1941, devised and bequeathed all her real and personal property to the applicant on trust for sale, and to divide the residue among two named nieces. It was submitted that, in accordance with *Bull* v. *Kingston* (1816), 1 Mer. 314, there was a gift under the will to Lizzie Wedge absolutely, and that the gift over to Harriet Ann Wedge was void for uncertainty. Alternatively, if Lizzie Wedge was merely a life tenant, she nevertheless had a power of disposition *inter vivos*, and the mortgages were valid. Moreover, the word "revert" in the will implied that the gift to Harriet Ann Wedge was not a vested interest, but was contingent upon her surviving Lizzie Wedge. His Honour Judge Caporn held that under Ord. V, r. 33, the matter might be dealt with in the absence of any representative of Harriet Ann Wedge, deceased. By consent, it was declared that Lizzie Wedge became absolutely entitled, under the will of George Wedge, to his real estate; that the mortgage debt created by the mortgage and further charges constituted subsisting charges on the real estate for the principal and interest. An order was also made for costs to be paid out of the estate, with liberty to apply.

Suitability of Alternative Accommodation.

In *Price* v. *Webber*, heard at Birmingham County Court, the claim was for possession of No. 120, Teddington Grove, Perry Barr, which the plaintiff required for the accommodation of himself, his wife and baby, and two girls and a boy—all of school age. Three bedrooms were therefore essential, but the plaintiff at his present address, viz., No. 113, Heneage Street, only had two bedrooms. These would suffice for the defendant, and his wife and two grown-up daughters. The house in Heneage Street was therefore offered as alternative accommodation. The defendant's case was that the plaintiff had only bought the Teddington Grove house in September, 1941. This was after the 6th December, 1937, the date now inserted in para. (*h*) of Sched. I, to the Rent, etc., Restrictions (Amendment) Act, 1933. The plaintiff could therefore not claim the benefit of the "greater hardship" proviso in para. (*h*), *supra*, and must show the existence of "suitable" accommodation, as defined in s. 3 (3) of the Rent, etc., Restrictions (Amendment) Act, 1933. The Heneage Street house, however, was smaller than that at Teddington Grove, and the rent was only half that now being paid by the defendant. His Honour Judge Dale held that the two houses were not comparable. The alternative accommodation was not suitable, and no order was made.

The Contracts of Dentists.

In *Watson* v. *Barker*, heard in the Liverpool Court of Passage, the claim was for damages for negligence. The plaintiff's case was that in June, 1936, he had gone to the dental hospital for the removal of a slight elevation of the lower frontal portion of his mouth. The defendant, however, had declined to give treatment on hearing of another dentist's increased charges. The plaintiff interviewed the hospital secretary, who explained that the defendant was not canvassing, but wanted the plaintiff to have private treatment. Accordingly, the plaintiff arranged to have treatment elsewhere for 22 guineas, this to include the supply of fresh dentures. The latter, however, were alleged to be a bad fit and of no use to the plaintiff. The defence was a denial of the plaintiff's allegations, and expert evidence was given as to the quality of the defendant's work for the plaintiff and of the defendant's standing in his profession. In a reserved judgment, the presiding judge (Sir W. F. K. Taylor, K.C.) held that the plaintiff's allegations failed. Judgment was therefore given for the defendant, with costs. It is to be noted that the supply of dentures is a contract for the sale of goods. See *Lee* v. *Griffin* (1861), 1 B. & S. 272. The statutory defences, under the Sale of Goods Act, 1893, s. 14 (1), are therefore available.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Notice of Disclaimer.

Q. A dwelling-house held under a long lease at a ground rent was badly damaged by enemy action, and the lessee gave the lessors a conditional notice of retention under s. 2 (1) of the Landlord and Tenant (War Damage) Amendment Act, 1941. It is not known if the lessee gave the requisite notice to the War Damage Commission, but after an interval of two months the lessors' agents wrote asking the lessee if he intended to disclaim. The lessee replied that the local authority had commenced to do first-aid repairs, so he presumed the War Damage Commission intended to make him a cost of works payment. The point that bothers me is for how long is the rent to cease. From experience I know first-aid repairs as done by a local authority are nothing like sufficient to enable the house to be let to a tenant of the class for which it is intended, and it may well happen that the lessee is unable to find the money necessary to enable him to do the repairs and send his receipted bills to the War Damage Commission as they require to be done. In this event, for how long is the rent to cease, and can the lessors take any step to expedite a decision in the matter?

A. Unless a copy of the notice is served on the War Damage Commission within one month from the service thereof on the landlord, the notice is invalid (s. 2 (1) (*a*)). Assuming that the notice is valid as a conditional notice of retention, it will only operate as a notice of disclaimer if and when the War Damage Commission determine to make a value payment (of which determination they will notify the tenant: s. 2 (2)). Pending the Commission's determination, the tenant's obligations are those set out in s. 2 (4). If the notice operates as a notice of disclaimer, it operates, as from the date on which the determination becomes final to determine the lease (1941 Act, s. 2 (2) (*a*), and 1939 Act, s. 8 (2) (*a*)), and rent ceases to be payable as from that date, and the rent will be apportioned in accordance with s. 13 of the 1941 Act. Until the determination becomes final, rent is still payable and the obligations of the tenant are those in s. 2 (4). A letter to the local office of the War Damage Commission setting out the facts of your case might expedite matters. Some builders are willing to do work on receipt of an assignment to them of the right to receive a cost of works payment, and the Commission approves of such assignments being made. The local office should be able to supply you with a form of such assignment.

Administrator Purchasing Property.

Q. A died intestate on the 28th February, 1942, possessed of a freehold farm and two freehold cottages and leaving two sons and a daughter entitled to share her estate. Letters of administration to her estate were granted to X and Y, the two sons, on the 24th May, 1942. On 19th October, 1942, the freehold properties mentioned above were put up for sale by public auction and the farm was knocked down to X and the two cottages to Y, they being the highest bidders. The estate is a small one and the solicitors concerned are anxious to avoid running up the somewhat heavy costs which would be entailed by conveying the freehold properties to X and Y by means of conveyances. As it appears that X and Y are now entitled to have the properties conveyed to each of them from themselves as administrators, can this be done by a simple vesting assent instead of by conveyance?

A. There are two reasons why assents are not applicable:—

(1) If a property is *purchased*, the use of an unstamped assent would, it is considered, be a fraud on the Revenue, for which the solicitor might be liable to a penalty.

(2) X and Y ought to have been advised that an administrator cannot purchase part of the intestate's estate, at least without the sanction of the court. Although under s. 36 of A.E.A., 1925, an assent is in favour of a purchase presumed to be properly made, any person discovering the facts might challenge an assent made in these circumstances, and A's daughter could challenge the transaction.

The best plan is to have a statutory declaration showing who are beneficially entitled and have a conveyance by which Y and the daughter severally assign their one-third shares of the equitable interest in the farm to X and X and Y by the same conveyance convey the legal estate to X. A similar conveyance of the cottages to Y. If the value of the farm in the case of X, or the value of the two cottages in the case of Y, does not exceed one-third of the net value of the whole of A's estate, it can be transferred by an assent reciting that with the approval of the daughter, who as evidence of such approval signs the assent, X and Y have appropriated the farm to X (or the cottages to Y) in satisfaction to the extent of £*x* or £*y* of his share of the estate of A. No stamp will be required, but a statutory declaration as to persons entitled should be made and the daughter must be advised that she is entitled to treat the auction sale as null, and the values at which the properties were "purchased" as not conclusive.

Obituary.

MR. E. S. COULSON.

Mr. Ernest Sydney Coulson, solicitor, of Betchworth, Surrey, died on Monday, 1st February, aged eighty-five. Mr. Coulson was admitted in 1880.

MR. C. J. E. CROSSE.

Mr. Charles James Ernest Crosse, formerly a solicitor in Manchester, died recently. Mr. Crosse was admitted in 1877, and practised in Manchester until 1912, when he was appointed Registrar of the High Court there. He retired in 1928. For sixty years he was a member of the Manchester Law Society, of which he was president in 1903 and hon. secretary from 1908 to 1912.

MR. A. E. DEBENHAM.

Mr. Alfred Edward Debenham, solicitor, of Queen Victoria Street, E.C.4, died on Saturday, 30th January. Mr. Debenham was admitted in 1892.

MR. F. W. JACKSON.

Mr. Frederick William Jackson, solicitor, of Liverpool, died on Monday, 25th January, aged sixty-eight. Mr. Jackson was admitted in 1900.

MR. W. B. ROBOTHAM, J.P.

Mr. William Blews Robotham, J.P., solicitor, formerly of Messrs. Robotham & Co., solicitors, of Derby, died on Sunday, 31st January, aged eighty-one. Mr. Robotham was admitted in 1885.

War Legislation.

STATUTORY RULES AND ORDERS, 1942 AND 1943.

No. 94. **Aliens** (Release from actual Military Service) Order, Jan. 18.
E.P. 19. **Apparels and Textiles.** Cloth (Making-up and Use) (No. 17) Directions, Jan. 23. (Amending S.R. & O., 1942, No. 2245.)
E.P. 105. Apparel and Textiles. Foot-wear. General Licence, Jan. 22, *re* Top-pieces.
E.P. 83. Apparel and Textiles. Lace (Manufacture and Supply) (No. 3) Directions, Jan. 18.
E.P. 102. **Board of Trade** (Information and Inspection) Order, Jan. 21.
E.P. 86. **Consumer Rationing** (No. 8) Order, 1941. General Licence, Jan. 16, *re* Small Towels.
E.P. 2623. Consumer Rationing (No. 8) Order, 1941. General Licence, Dec. 31, *re* Supply of Rationed Goods to the Merchant Navy Supply Assoc., Ltd.
E.P. 2588. Consumer Rationing (No. 8) Order, 1941. General Licence, Dec. 31, *re* Towels and Towelling.
E.P. 70. Consumer Rationing (No. 8) Order, 1941. Licence, Jan. 18, *re* Supply of War Damaged Goods.
No. 1579. **Copyright** (United States of America) Order in Council, Aug. 6.
E.P. 74. **Defence** (General) Regulations (Isle of Man), 1939. Order in Council, Jan. 13, adding reg. 45AA.
E.P. 90. **Elastic** (Control of Use) Order, Jan. 21.
E.P. 78. **Feeding Stuffs** (Rationing) Order, 1942. Supplementary Directions, Jan. 15.
E.P. 119. **Finance Regulation of Payments** (Consolidation) Order, Jan. 25.
No. 76. **Foreign Jurisdiction.** Northern Rhodesia (Native Reserves) Amendment Order in Council, Jan. 13.
No. 36. **Import Duties** (Drawback) (No. 1) Order, Jan. 21.
No. 64. Import Duties (Exemptions) (No. 1) Order, Jan. 19.
No. 107. **Local Government, England.** Isles of Scilly Order, Jan.
E.P. 109. **Meat** (Rationing) Order, 1942; **Sugar** (Rationing) Order, 1942; and **Food** (Points Rationing) (No. 2) Order, 1942. Amendment Order, Jan. 23.
No. 265. **Merchant Shipping** International Labour Conventions. Merchant Shipping (Colonies) (Amendment) (No. 2) Order in Council, Nov. 11.
No 93 **National Fire Service** (General) Regulations, Jan. 16
No. 2697. National Health Insurance. Navy, Army and Air Force Emergency Provisions Regulations, Dec. 29.
No. 75. National Service. Order in Council, Jan. 13, approving Proclamation directing that certain British Subjects shall become liable to be called up for service.
E.P. 110. **Salmon** (Distribution) Order, Jan. 23.
E.P. 116. **Toilet Preparations.** General Licence, Jan. 21, *re* Supply of Anti-Dermatitis Preparations.
No. 124. **Use of Inventions, etc. in U.S.A.** (Exemption) (No. 1) Order, Jan. 19.

During 1942 the Legal & General Assurance Society, Ltd., issued a total of 11,621 new life policies for sums assured of £11,311,583. The corresponding total net figures for 1941 were 10,811 policies for sums assured of £10,133,159. With regard to immediate annuities, there were 470 bonds for £525,760 consideration money. The corresponding figures for 1941 were 376 bonds for £404,133 consideration money.

Notes of Cases.

HOUSE OF LORDS.

Perrin *v.* Morgan.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Russell of Killowen and Lord Romer. 25th January, 1943.

Will—Construction—Bequest of "all moneys of which I die possessed"—Whether a good residuary gift of all the personal estate.

Appeal from a decision of the Court of Appeal (86 SOL. J. 195).

The testatrix made her will dated the 27th September, 1935, on a printed form. After a specific devise of certain freehold cottages the will continued: "I direct that all moneys of which I die possessed of shall be shared by my nieces and nephews, namely:" and there followed the names of fourteen nieces and nephews. The testatrix died in 1939 leaving investments valued at £32,783, cash at the bank £689, dividend received or accrued £36, rents due £82, and household goods valued at £62. In addition, she left some real estate of which a freehold property valued at £340 was undisposed of. This summons was taken out to determine what passed under the gift of "all moneys." Farwell, J., held that the words did not cover the investments or the household effects, and those passed as an intestacy. The Court of Appeal affirmed his decision, holding that it was bound by the rule of construction that the word "money" in a will must be construed in what is called its strict sense, unless there is a context which permits of an extended meaning being given to it. The legatees appealed.

VISCOUNT SIMON, L.C., said the appeal raised the question whether when the word "money" appeared in an English will as the description of that of which the testator was disposing, the word, in the absence of any context or other surrounding circumstances proper to be considered as varying its meaning, must be interpreted according to an alleged "fixed rule of construction" which had been regarded by our courts as established and binding for many generations past, and which was said to be traced back to a pronouncement of Chief Baron Gilbert in 1725. The fundamental rule in construing a will was to put upon the words used the meaning which, having regard to the terms of the will, the testator intended. The question was not what the testator meant to do when he made his will, but what the written words he used meant in the particular case. In the case of an ordinary English word like "money," which was not always employed in the same sense, he could see no possible justification for fixing upon it, as the result of a series of judicial decisions upon a series of different wills, a cast-iron meaning which must not be departed from unless special circumstances existed. If a word had only one natural meaning, it was right to attribute that meaning to the word when used in a will, unless the context or other circumstances which might be properly considered showed that an unusual meaning was intended. But the word "money" had not got one natural or usual meaning. It had several meanings, each of which in appropriate circumstances might be regarded as natural. In its original sense, which was also its narrowest sense, the word meant "coin." But the conception very quickly broadened into the equivalent of "cash" of any sort. A further extension would include not only coin and currency in the possession of an individual but debts owing to him and cheques which he could pay into his banking account. Sums on deposit might be included by a further extension. But this was not the limit of the senses in which the word was frequently and naturally used. The word might be used to cover the whole of an individual's personal property—sometimes, indeed, the whole of a person's property, whether real or personal. He protested against the idea that in interpreting the language of a will there could be some fixed meaning of the word "money," which the courts must adopt as being the "legal" meaning as opposed to the "popular" meaning. The proper meaning was the correct meaning in the case of the particular will, and there was no necessary opposition between that meaning and the popular meaning. The duty of the court, in the case of an ordinary English word which had several quite usual meanings which differed from one another, was not to assume that one out of several meanings held the field as the correct meaning, until it was ousted by some other meaning regarded as "non-legal"; but to ascertain without prejudice between various usual meanings which was the correct interpretation in the particular document. It could rarely happen that the interpretation of a word like "money" in one will provided a sure and certain guide to its meaning in another will which was differently expressed (*Abbott* v. *Middleton*, 7 H.L.C. 68). In the absence of context to tip the balance, the modern decisions all come down on the side against the "popular" sense (*In re Gates* [1929] 2 Ch. 420; *In re Hodgson* [1936] Ch. 203). Notwithstanding the long tradition of the authorities, he would urge the House to reject the view that the court must start with a presumption in favour of a particular narrow meaning of the word "money." He would have thought that the mere fact that in a will a testator in a single sentence disposed of "all the money of which I am possessed" was a reason for interpreting money in a very wide sense, though there was no positive context. In choosing between popular meanings, it seemed to him that an interpretation which included realty as well as personalty in the word "money" might often be going too far. He had dealt with this case in the widest aspect, but he must add that he thought that, even if the so-called rule of construction were left standing, there were indications in this will which might justify the application of the so-called rule being displaced by the language used. The present case was not one in which the House was required, on the ground of public interest, to maintain a rule which had been constantly applied but which it was convinced was wrong. It was more important to promote the correct construction of future wills than to preserve consistency in misinterpretation. He moved that the appeal be allowed and that it be

declared that the bequest of "all moneys" of which the testatrix died possessed included all the net personalty of her estate.

The other noble and learned lords agreed in allowing the appeal.

COUNSEL: *Meyrick Beebee; Danckwerts; Gravenor Hewins.*

SOLICITORS: *C. R. Enever & Co.; Park Nelson & Co.*, for *G. B. Footner and Sons*, Romsey, Hants; *Stocken, May, Sykes and Dearman.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

Craig *v.* Kanseen.

Lord Greene, M.R., and Goddard, L.J. 8th and 11th December, 1942.

Practice—Irregular service of summons for leave to proceed—Order made thereon—Invalidity and not mere irregularity of order—Inherent jurisdiction of court to annul order—Courts (Emergency Powers) Act, 1939 (2 & 3 *Geo.* 6, *c.* 67), *R.S.C., Ord.* 78, *rr.* 1–3.

Defendant's appeal from an order of Croom-Johnson, J.

On 12th January, 1937, the respondent obtained judgment against the appellant, and on 18th January, 1940, leave to proceed on the judgment was given under the Courts (Emergency Powers) Act, 1939. On 27th September, 1941, a bankruptcy notice, reciting the order for leave to proceed, was served upon the appellant. On 29th September, 1941, the appellant wrote to the respondents' solicitors asking for details with regard to the order, as he did not remember having been notified that they were going to apply for it, and notifying them of his intention to satisfy the court that he could not satisfy the judgment by reason of circumstances directly attributable to the war. He was not given the details for which he had asked, and a second bankruptcy notice, dated 13th May, 1942, was served on him on 2nd June, 1942. On 15th July, 1942, a receiving order was made against the appellant. On or about 25th August, 1942, the appellant discovered that the order giving leave to proceed was invalid because the summons asking for it had not been previously served upon him. On 12th October, 1942, Master Horridge ordered that the order giving leave to proceed be wholly set aside as irregular. On appeal, Croom-Johnson, J., reversed that order.

LORD GREENE, M.R., said that though the summons asked that the order be "wholly set aside as irregular," it would not be right to construe the summons so narrowly as to infer that the main matter which the draftsman of the summons had in mind was Ord. 70, r. 1, of the Rules of the Supreme Court. Rule 3 provided that in an application under Ord. 70 the grounds of the application must be stated in the summons. The ground of the application as stated in the summons to his lordship's mind supported the argument that the order complained of was a nullity, and on the face of the summons, facts were alleged, which, if correct, would make the order a nullity. Moreover, the summons did not in terms refer to R.S.C., Ord. 70. It would not be right to construe the summons as one upon which an argument based on a nullity could not be raised. Even if that view were wrong, his lordship said that he would have given leave to amend the summons so as to raise the two alternative cases, one under Ord. 70 and one under the jurisdiction to set aside an order which was a nullity. His lordship then referred to *Smurthwaite* v. *Hannay* [1894] A.C. 494, and to the statement in Daniell's "Chancery Practice," 8th ed., vol. 1, p. 708: "A judgment may also be set aside for irregularity if the irregularity consists in non-compliance with one of the rules. The court or a judge may either set it aside, or amend or otherwise deal with it in such manner and upon such terms as the court or a judge may think fit." After referring to Ord. 70, r. 1, the statement proceeded: "A judgment obtained by some step not warranted by the rules or capable of being sanctioned is wholly void, and may be set aside," and cited *Smurthwaite* v. *Hannay*, *supra*. The statement continued, in reference to the necessity of showing that the application under Ord. 70 is made promptly: "The provision only applies where the irregularity is capable of being waived under Ord. 70, r. 1; but where the proceedings are wholly void, they may be set aside at any time. In such a case no defence need be shown; but it is otherwise where the court has discretion as to setting aside (*Hamp-Adams* v. *Hall* [1911] 2 K.B. 942) . . . Where judgment against a party has been signed irregularly, it is worse than a mere non-compliance with the rules, and he is entitled *ex debito justitiae* to have it set aside; and the court has no power to impose any terms upon him except as a condition of giving him his costs." After examining *Anlaby* v. *Prætorius* (1888), 20 Q.B.D. 764; *Hughes* v. *Justin* [1894] 1 Q.B. 667; *Hewitson* v. *Fabre* (1888), 21 Q.B.D. 6; *Hamp-Adams* v. *Hall*, *supra*, and *Fry* v. *Moore* (1889), 23 Q.B.D. 395, his lordship said that those cases established that an order which could properly be described as a nullity was something which the person affected by it was entitled *ex debito justitiae* to have set aside. The court in its inherent jurisdiction could set aside its own order and an appeal from the order was not necessary. Failure to serve process where service of process was required was a failure going to the root of our conceptions of the proper procedure in litigation. In the present case the alleged service disclosed on the face of the affidavit of service was no service at all. The order was a nullity and must be set aside.

Appeal allowed.

COUNSEL: *C. Gallop; W. A. L. Raeburn.*

SOLICITORS: *G. F. Wallace & Co.; Samuel Tonkin, Booth & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

APPEALS FROM COUNTY COURT.

Butcher *v.* Poole Corporation.

Lord Greene, M.R., du Parcq, L.J., and Lewis, J.
3rd and 4th November, 1942.

Emergency legislation—Tenancy properly determined—Tenant refuses to leave—Ejected—Damages for trespass—Whether leave of court necessary for re-entry by landlord—Courts (Emergency Powers) Act, 1939 (2 & 3 *Geo.* 6, *c.* 67), *s.* 1.

Defendants' appeal from a judgment of His Honour Judge Cave given at Poole County Court.

The learned county court judge had awarded the plaintiff damages for trespass. The plaintiff had been in occupation of a house belonging to the defendants and there was some argument as to whether the occupation amounted to a tenancy or whether he was required to occupy the house as part of his contract of service. His possession was brought to an end by the defendants, but he refused to leave, whereupon he and his belongings were removed from the premises.

LORD GREENE, M.R., said that he proposed to deal with the case on the highest assumption in favour of the plaintiff that could be made, that his occupation during the employment was the occupation of a tenant and that he had possession throughout, and that when possession came to an end he had possession albeit wrongfully. It was said that the defendants were exercising a remedy by way of taking possession of property or by way of re-entry on land under s. 1 (2) (*a*) (ii) and (iii) of the Courts (Emergency Powers) Act, 1939. The long title of that Act was: "An Act to confer on courts certain powers in relation to remedies in respect of the non-payment of money and the non-performance of obligations . . ." It was quite settled that the long and short title of an Act cannot be taken as limiting the provisions of the enactment itself, but that it aids in construing words of doubtful and ambiguous import in the Act. In the present case there were, in the body of the Act itself, words which made it clear that what the appellants did in this case was outside the Act. Section 1 (1) dealt with the enforcement of judgments. Section 1 (2) dealt with acts of self-help for which the leave of the court was required, and s. 1 (3) dealt with the enforcement of different types of judgment not falling within s. 1 (1). All were cases where judgment had been given by reason of a default. Section 1 (4) was an omnibus clause, the language of which indicated that the class of subject-matter dealt with in the three preceding subsections was one where the right of the party seeking to enforce the remedy arose by virtue of a failure to satisfy a judgment to pay rent or other debt or to perform an obligation. That clearly carried out the intention of the Act as expressed in the long title. From the proviso to s. 1 (2) it also appeared clear that the Legislature was dealing with remedies in consequence of default. His lordship then quoted from *Smart Bros.* v. *Ross* [1942] Ch. 158, at p. 167 (approved in the House of Lords (1942), 2 All E.R. 282), and said that the question was not whether the act of the owner in taking possession was exercising a remedy in the abstract sense of the word "remedy," but whether in the context of the Act it was a "remedy" of the kind referred to in s. 1 (2). A "remedy by way of re-entry on land" in its broadest sense might be one of two kinds. It might be a remedy the exercise of which determined or defeated some right or title in the person against whom it was exercised, or it might be a remedy the exercise of which was merely an exercise of existing rights of property and did not determine any rights of the person against whom it was exercised. In the present case the defendants were not exercising a right and a consequential remedy by reason of a breach of obligation, but it was a right inherent in their right of property. Section 1 (4) postulated that there was a person liable to perform the debt or obligation and all the remedies were matters which defeated or took away rights of other parties. All were, moreover, remedies for default. His lordship quoted from the speech of Viscount Simon, L.C., in *Smart Bros, Ltd.* v. *Ross* (1942), 2 All E.R. 282, 285, and said that in the present case the appellants were not determining an estate, but merely acting by virtue of their own estate, and therefore what they had done was not exercising a remedy within s. 1 (2). The appeal would be allowed.

DU PARCQ, L.J., agreed; and added that if one gave attention to the words only they would be wide enough to cover re-entry as against a trespasser, but he agreed with Lord Greene, M.R., that when one looked at the whole Act it was manifest that when the Legislature spoke of re-entry, it meant a re-entry by reason of antecedent failure of the occupier to fulfil an obligation.

LEWIS, J., agreed.

COUNSEL: *Stewart Fay; R. F. Levy*, K.C., and *Geoffrey Howard.*

SOLICITORS: *Trevanion & Curtis*, Poole; *The Town Clerk of Poole.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re Lynch; Lynch *v.* Lynch.

Uthwatt, J. 11th January, 1943.

Will—Construction—Life interest bequeathed to "my wife during her widowhood"—Testator not married to legatee—Validity of bequest.

Adjourned summons.

The testator by his will, dated the 20th July, 1940, after appointing "my wife L" and another person to be executors and trustees thereof, gave his residuary estate to his trustees upon trust for sale, conversion and investment. He directed his trustees to pay the income arising from his residuary estate "to my wife during her widowhood for her own use and benefit absolutely and after the death or remarriage of my wife" he directed them to hold the residue upon trust for his sons. The testator died on 20th November, 1940, and his will was proved by L alone. It appeared that the testator's wife had died in 1929. From 1935 onwards the testator and L had lived together as man and wife. They never married and both knew that they could never marry, as they were within the prohibited degrees of consanguinity. This summons was taken out by L asking whether she was entitled to a life interest in the residuary estate until she should marry.

UTHWATT, J., said that there could be no doubt as to the person who was referred to in the will as "my wife." It was argued that this was a gift for a period which the testator had defined as "during widowhood," and as there never would be any such period the gift failed. That the will might have such a construction was evident from the decision of Farwell, J., in *In re Gale* [1941] Ch. 209; 85 SOL. J. 118. With that decision he agreed. The question was one of construction of this particular will. In this will "my wife" was identified. What did the testator mean by "remarriage"? He could only have meant marriage. "Remarriage" was obviously on the scheme of the will to coincide with the termination of the interest given "to my wife during her widowhood." In these circumstances he had no difficulty in arriving at the conclusion that, upon the true construction of this particular will and in the circumstances in which it was made, the testator had provided his own dictionary in his application of the word "wife" to L. The proper meaning of the phrase "to my wife during her widowhood" was "to L until she shall marry." Accordingly, L was entitled to a life interest in the residuary estate beginning at the death of the testator and continuing until she should marry.

COUNSEL: *T. D. D. Divine; E. M. Winterbotham; G. Hewins.*

SOLICITORS: *Redpath, Marshall & Holdsworth*, for *Shackles, Dunkerly and Barton*, Hull.

[Reported by MISS B. A. BICKNELL, Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Wilkes *v.* Wilkes.

Hodson, J. 3rd November, 1942.

Husband and wife—Divorce—Wife's petition on the ground of desertion—Husband says "This is the end"—Continues to live in same house—Separate rooms occupied—No cohabitation—Separate meals—Desertion—Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 *Geo.* 5, *c.* 49), *s.* 176—*Matrimonial Causes Act*, 1937 (1 *Edw.* 8 & 1 *Geo.* 6, *c.* 57), *s.* 2.

Wife's petition for divorce on the ground of desertion for three years and upwards immediately preceding the date of the petition.

The petition was dated 29th May, 1940. Two years before, in June, 1938, the husband left the house which was occupied by the wife and had refused to return although he was more than once requested by his wife. During part of the time in which the husband and wife had been living under one roof, in March, 1937, the husband said to his wife: "This is the end." From that time onward he did not sleep with her, never went into her sitting room, occupied a separate bedroom and sitting room and never had meals with her. The house was in the husband's name, but was mortgaged to a building society, and the wife paid the instalments of mortgage money. On the infrequent occasions when the husband had meals in the house, the husband went to the wife's store, took the food which she had provided and consumed it. The wife was anxious for a reconciliation, but he at all times refused it.

HODSON, J., said that Hill, J., pointed out in *Jackson* v. *Jackson* [1924] P. 26 that there might be desertion although the husband continued to live under the same roof as the wife, but the facts must be very strong. They must show that the husband actually caused the wife to live apart, against her will—not merely to sleep apart, but to live apart. He referred to an unreported case of *Diver* v. *Diver*, where the only question was whether the separation began a few months sooner than the husband left the house. It appeared that not only did he insist on occupying a separate room, but he never spoke to his wife, and if the wife spoke to him he never answered her. Then, when she asked why she was being so treated, he knocked her down. In the circumstances the present case fell within the same boundary line as *Smith* v. *Smith*, 56 T.L.R. 97, rather than on the other side of the line, on which fell *Littlewood* v. *Littlewood* (86 SOL. J. 341). His lordship found that the common home had been put an end to by the husband in March, 1937, and in those circumstances there would be a decree *nisi* with costs.

COUNSEL: *B. L. A. O'Malley.*

SOLICITORS: *Lionel Lazarus & Leighton.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

HILARY SITTINGS, 1943.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.			EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice FARWELL
Monday,	Feb.	8	Mr. Reader	Mr. Andrews	Mr. Jones
Tuesday,	..	9	Blaker	Jones	Hay
Wednesday,	..	10	Andrews	Hay	Reader
Thursday,	..	11	Jones	Reader	Blaker
Friday,	..	12	Hay	Blaker	Andrews
Saturday,	..	13	Reader	Andrews	Jones

DATE			GROUP A. Mr. Justice BENNETT *Non-Witness*	Mr. Justice SIMONDS *Witness*	GROUP B. Mr. Justice MORTON *Witness*	Mr. Justice. UTHWATT *Non-Witness*
Monday,	Feb.	8	Mr. Blaker	Mr. Andrews	Mr. Reader	Mr. Hay
Tuesday,	..	9	Andrews	Jones	Blaker	Reader
Wednesday,	..	10	Jones	Hay	Andrews	Blaker
Thursday,	..	11	Hay	Reader	Jones	Andrews
Friday,	..	12	Reader	Blaker	Hay	Jones
Saturday,	..	13	Blaker	Andrews	Reader	Hay

Mr. Hubert Harris de Courcy Vaughan, solicitor, of Kington, left £7,694, with net personalty £7,058.

The Law Society.

A special general meeting of The Law Society was held at Chancery Lane on the 29th January. The President, Mr. G. S. POTT, detailed in his opening address the contribution which the solicitors' profession was making to the war effort. Out of 15,000 solicitors in private practice in 1939, approximately 9,000 were or had been engaged in some form of national service. Over 5,000 solicitors and 2,000 articled clerks were in the fighting services, and 127 solicitors and 91 articled clerks had sacrificed their lives. Many decorations had been conferred on members of the profession. Turning to those who were left behind to carry on at home, the President said that the panels which considered applications for deferment of military service were not working at so great a pressure. They were now also dealing with applications from women employees in the lower age groups, and the position in regard to these had become increasingly difficult as the requirements of the Ministry had increased. Applications only came before the panels of the Society when sent by the District Man-power Board in cases of doubt whether a woman was pivotal, or where the Lord Chancellor's Department advised on a particular case, or where an appeal had been made against a decision of the board. The Council had reason to think that the panels' recommendations had usually been acted upon, but it might well be that in the future they would not be so often adopted by the District Man-power Board. While the exigencies of national service must be supreme, the Council were by no means happy about the position, and were trying to obtain some modification of the procedure with a view to securing that women of the 1923 age group or born at the end of 1922 who were now affected by the National Service Acts should be dealt with on the same basis as those in the immediately senior age groups. The President quoted statistics which showed the magnitude of the task of the panels, and said that the total number of applications for deferment dealt with by them had exceeded 11,000.

REGISTRATION OF TITLE.

Lord Justice Scott's committee on the planning of rural England had recommended that registration of title should be made compulsory over the whole of England and Wales, and added that they recognised that the extension of compulsory registration would for reasons of staff and administration take some time, but it was important that it should be completed within five years. The departmental committee appointed by the Lord Chancellor to consider that recommendation included two members of The Law Society's Council. The Council had given evidence to the committee that they regarded extension of compulsory registration as impracticable during war-time; it should only be commenced when it could be carried through smoothly, and this would involve a new ordnance survey and a fully trained staff for the Land Registry, also a return of adequate staff to solicitors' offices. If compulsory registration was considered desirable, it should be introduced gradually, starting with areas with well-known boundaries such as counties, and then only for sales and leases for terms of over forty years.

A questionnaire had been sent out to the provincial law societies and to a cross-section of the London profession on solicitors' remuneration. An analysis of the replies showed that the profession was by no means unanimous on the desirability or expediency of applying for an increase at the present time. The Council held the view that any such application must be supported by evidence of increased expense and lower profits since the last increase in remuneration was granted. Further information had been requested on this point. Some of the provincial societies had advocated an application without any specific grounds, but the Council regarded such a course as hopeless.

The Services Divorce Department established by the Society a year ago continued to work satisfactory. It had conducted 1,700 cases, and the number would probably be greater in the second year. In the collection of evidence and the preparation of statements the department had been assisted by the Legal Advice Bureau and the legal aid sections set up by the various commands. The scheme had also been adopted by the Royal Air Force, which had appointed serving solicitors to the various commands. The department had greatly relieved the pressure on the Poor Persons Committees, with the result that the poor persons procedure had in the main worked very well and smoothly.

The Council had given much attention to the drafting of rules and regulations under the Solicitors Act, 1941, The Solicitors (Compensation Fund) Rules, 1942, had been brought into force and some criticism had been levelled at the Council because they had not exempted all serving members from obligation to contribute. This criticism, said the President, was not really just, as the Society in general meeting had rejected the proposal to exempt all serving members. Some principle had to be found to guide the Council in the exercise of its discretion to exempt. The Council felt that the fairest principle to adopt was not to exempt in cases where the serving man was receiving a share of profits from his firm. Where he was not, he might fairly be exempted, unless he was better off pecuniarily by going into the Service, in which case it could not well be called a hardship for him to have to pay. Moreover, the fund was not an insurance fund, but had been set up by the Society itself as a method of restoring public confidence in the profession; as such it would enure to the benefit of a solicitor even while temporarily out of practice, just as much as to the benefit of those who remained in practice under the present difficult conditions.

Under the Solicitors (Emergency Provisions) Act, 1940, the Council had been given power to allow the national service of an articled clerk to count as service under articles, provided he had spent at least two years in the office of his principal. To give every possible effect to this provision the Council had set out in *The Gazette* of last August their views and hopes concerning the opportunities articled clerks should have, and had urged

all principals to do nothing to the detriment of articled clerks called up before completing two years under articles. They suggested that where an articled clerk would be obliged to enter into further articles after the war, the principal ought normally to take him for the further term, or to make arrangements for him to take the same training elsewhere as he would have been entitled to receive.

The Council had established a post-war aid committee, which during the past six months had been actively engaged on the various problems which would confront solicitors on their return to civil life. There would clearly be a demand for refresher courses in law, and the committee was preparing a report dealing with the nature and extent of the various courses which might be offered. The problem of demobilisation had to be faced, and when the national demobilisation scheme was ready, the position which solicitors might occupy in it would be examined.

The Treasury, as a result of representations made by the Council, had removed a slur upon solicitors by deciding that their certificates endorsed on transfers of shares from enemy ownership should be accepted equally with those of bankers and stockbrokers. A recent case before the Court of Appeal had decided that solicitors who had rendered a detailed bill of costs which had been taxed were entitled to recover its amount although this exceeded the lump-sum bill originally rendered. In closing, the President congratulated two members on receiving high distinction; the peerage conferred upon the immediate past president of the Society, Sir Dennis Herbert, M.P., and the knighthood conferred on Sir Edward Herbert.

Audit of Solicitors' Accounts.

Mr. W. A. Bright pointed out that solicitors are now compelled to contribute to the Compensation Fund but are not given the safeguard of the annual audit of solicitors' accounts; he moved that the Council should inquire of all practising solicitors whether it was their custom to have their accounts audited, and to urge those whose answer should be in the negative to do so forthwith in the interest of themselves, the profession, and the public. He said that the meeting must face the anomalous position in which it had been placed by the action of four members of Parliament, who had so far not explained their reasons, in obstructing the passage of the Solicitors Bill, 1941, so that the provisions for annual audit had to be postponed. A compensation fund without a statutory audit was like pouring water down a sink. The postponement was until the Sovereign had declared the state of emergency to be over, but no one could expect that declaration for several years. Nevertheless, in his opinion and in that of many of his friends, the postponed section was binding on the conscience of every solicitor in practice, and on his pocket as well. The solicitor-trustee business was now going to banks and insurance companies. In 1928, at a time when there had been a serious number of defalcations, one of the legal journals had printed an article headed, "To put our House in Order." The author had advocated an audit and a compensation fund, and had expressed the opinion that the refusal to submit clients' accounts to audit had been one of the strongest factors in the demand for a public trustee. Some means must be devised for bringing into the fold those solicitors who still did not have their accounts audited, and an appeal to them to do so should be printed in every *Gazette*. The Council should keep a register of solicitors who had their accounts audited, so that these could refer their clients to the register. The profession must do something at once to restore public confidence in its integrity.

Dr. Stafford Clark, seconding the motion, said that the acceptance by members of the Society of a scheme requiring solicitors as a whole to become underwriters of clients suffering loss, through dishonesty or ostrich-like stupidity, involved two safeguards: an annual accountant's certificate based upon audit, and the keeping of separate accounts for trust funds. To judge from the protests received from many country firms (who seemed to have appreciated the position only when asked to sign declarations and pay £5 a head contribution) dissatisfaction was very widespread. The adoption of the motion would go some way to realise the principles of the statutory audit.

Mr. F. N. Field said that no solicitor ought to be concerned in prosecuting another for aberration. A police court could not award compensation and so criminal proceedings could not help the client. The remedy was to invoke the summary jurisdiction of the court over every solicitor as an officer of the court.

Mr. Hughes (Bath) said that the secretary of the local Citizens' Advice Bureau had told him that 75 per cent. of the persons who came and asked its advice could afford to pay fees, but the bureau found it very difficult to persuade them to consult solicitors because they did not trust them. He urged members to realise the seriousness of the present position. War had been declared upon solicitors by the bureaucracy, which hated the profession and wished to do away with it. Solicitors also faced the opposition of insurance companies, banks and other bodies. They must do something definite without delay to convince the public that they meant business. If they would stand together, they could be the strongest trade union in the country, and then they could not be dictated to by any tin-pot body of people in the House of Commons. They must make up their minds what they wanted and see that they got it, and the motion went a long way towards their goal. The Society should have introduced its own fidelity-bond corporation, which would be a very profitable concern.

Sir Harry Pritchard saw a good deal to be said in favour of the motion. Many solicitors did not yet completely comply with the Solicitors' Accounts Rules, largely owing to procrastination. When the audit section came into operation it would have a very unfortunate effect on solicitors who had not complied with the rules, for they had signed false declarations that they had done so. The Society might find it desirable to introduce another Bill to bring s. 1 into operation before the end of the emergency. The Council should notify all members of the profession, calling attention to these conditions and urging them to have their accounts examined and put into the proper form. The large correspondence entailed by the motion was not necessary, for the question would not be answered by just those solicitors who did not have their accounts audited. A notice sent out by the Council would be quite sufficient.

Mr. Barry O'Brien also considered that the motion called for a great waste of paper and time. He could not believe that the notice would influence any solicitor who was at present foolish enough to carry on his business without the aid of a chartered accountant.

Mr. Edgar Jones said that an audit was impracticable; an examination only was needed.

Mr. Bright agreed to this alteration of wording, but would not accept Sir Harry Pritchard's suggestion that he should withdraw his motion on an undertaking that the Council should consider the matter immediately. The motion was put to the vote and defeated.

Mr. C. L. Nordon moved that the Council should consider the establishment of district "service chambers," to provide demobilised solicitors with facilities for study and the rebuilding of their practices, with the assistance of a common staff. No seconder came forward, but the President assured him that the Council would consider his suggestion sympathetically. He moved a second motion requiring the council to make representations with the object of simplifying and clarifying the present vast output of statutory rules and orders. The voting on this motion tied, and the President gave his casting vote in favour of the present position.

Parliamentary News.

HOUSE OF LORDS.

British Nationality and Status of Aliens Bill [H.L.].
Amendments Reported. [2nd February.

Cardiff Corporation Bill [H.L.].
Read Second Time. [27th January.

Consolidated Fund (No. 1) Bill [H.C.].
Read First Time. [2nd February.

Crown Lands Bill [H.C.].

Minister of Town and Country Planning Bill [H.C.].

Workmen's Compensation Bill [H.C.].
Read Second Time. [2nd February.

Grand Union Canal Bill [H.L.].

Liverpool Hydraulic Power Bill [H.L.].
Read First Time. [28th January.

HOUSE OF COMMONS.

Bridgwater Gas Bill [H.C.].

Colne Valley Water Bill [H.C.].

Northampton Corporation Bill [H.C.].

Sunderland Corporation Bill [H.C.].
Read First Time. [2nd February.

Catering Wages Bill [H.C.].
Read First Time. [28th January.

War Damage (Amendment) Bill [H.C.].
Read First Time. [27th January.

QUESTIONS TO MINISTERS.

Liabilities (War-time Adjustment) Act.

Mr. Doland asked the Attorney-General whether he is now in a position to inform the House how far use is being made of the Liabilities (War-Time Adjustment) Act intended to meet cases of financial difficulty occasioned by the war: and the number of those who, having applied for help under this Act, have obtained it, and are still in business.

The Attorney-General: Under the Liabilities (War-Time Adjustment) Act, protection orders have been made in 776 cases, but in 109 of these cases the court has refused to make an adjustment order and has revoked the protection order. In 386 of these cases an adjustment order has been made. In seven of these cases the court has now revoked the adjustment order. The remaining 274 cases are under investigation. In 21 cases the debtor has carried out the terms of the adjustment order and has been granted an order of discharge. Schemes have been approved in 156 cases, in 35 of which a certificate of discharge has been issued. One scheme has been revoked by the court. Liabilities adjustment officers have given advice and assistance in very many other cases in which an adjustment order was not suitable or was not desired. Of those applicants who were in business when they applied for help, and who have obtained help, a large majority are still in business, but the exact number is not known. [26th January.

Notes and News.

Honours and Appointments.

The India Office announces that the King has been pleased to appoint The Hon. Robert Langdon Yorke, I.C.S., to be a Judge of the High Court in Allahabad in the vacancy caused by the retirement of The Hon. Ganga Nath.

Notes.

Mr. John Victor Nesbitt has been elected a Master of the Bench of the Inner Temple.

The Committee of The Royal Cancer Hospital (Free), Fulham Road, London, S.W.3, gratefully acknowledge the receipt of £5,000 from a generous benefactress for naming a bed "Winifred Mary." The hope was expressed that the gift might be the means of encouraging others to help this great national work by similar benefactions.